

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA)
VS.)
ALI SHUKRI AMIN)
)
) 1:15-CR-164 CMH
) ALEXANDRIA, VIRGINIA
) JULY 24, 2020

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE CLAUDE M. HILTON
UNITED STATES DISTRICT JUDGE

24 Proceedings reported by stenotype, transcript produced by
25 Julie A. Goodwin.

APPEARANCES

FOR THE PLAINTIFF:

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United States District Court
401 Courthouse Square
Eighth Floor
Alexandria, Virginia 22314

1 (JULY 24, 2020, 9:00 A.M., OPEN COURT.)

2 THE COURTROOM DEPUTY: *United States of America versus*
3 *Ali Amin*, Case Number 2015-CR-164.

4 MR. HAMMERSTROM: Good morning, Your Honor. Neil
5 Hammerstrom for the United States.

6 THE COURT: All right. Good morning.

7 THE DEFENDANT: Good morning, Mr. Hilton. Ali Amin,
8 the defendant.

9 THE COURT: All right. Good morning.

10 This comes on on your motion. You can take your
11 mask off if you want to.

12 MR. HAMMERSTROM: That's much appreciated. Thank you.

13 Judge, the probation office, as you know, has
14 recommended four additional special conditions to be added to
15 Mr. Amin's supervised release. The government feels these are
16 very reasonable.

17 This all arises out of conviction for material
18 support to ISIL, a foreign designated terrorist organization.
19 And Mr. Amin conducted all of his business over his computer at
20 home. He had 4,000 followers.

21 He arranged for four people to go in and fight with
22 ISIS. They're all believed dead now. And these are reasonable
23 additions to his previously imposed conditions of supervised
24 release to ensure that he doesn't engage in this type of
25 activity from the privacy of his home with other supporters of

1 terrorist groups and is designed to protect the public.

2 The one thing the case law requires is that any
3 added special conditions be related to the 3553 factors that
4 are imposed at sentencing. And we've identified the fact that
5 they relate to the nature -- the nature and circumstances of
6 the offense, the history and characteristics of the defendant,
7 and the need to protect the public. And this is all outlined
8 on page 5 of our motion.

9 We would ask the Court to make findings that these
10 do relate to the 3553 factors and that they be imposed.

11 Thank you, Your Honor.

12 THE COURT: All right.

13 THE DEFENDANT: (Speaking in foreign language) in the
14 name of the one true god, encompassing the merciful --
15 merciful.

16 So, you generously gave me last time we met an
17 opportunity to look into what the prosecution was interested in
18 adding to my terms of probation, and I greatly appreciate that.
19 And in response, I filed a motion.

20 So the first thing I would like to clarify is that
21 this hearing today is not about the motion which the
22 prosecution just filed. I received that motion about three
23 days ago. These hearings were actually set in January. In
24 fact, they didn't file a motion until I filed the motion.

25 So, the -- one of the procedural errors that was

1 one of my issues in my original motion was that the request was
2 made informally. And as far as I could tell by my research,
3 they had to have submitted something before the docket of the
4 Court for it to be considered. They did not do so until I had
5 already objected to it, and I only received that three days
6 ago.

7 So, it's important, I feel, to clarify that this
8 hearing was pertaining to their informal request, not the
9 request which they filed three days ago. Because had I not
10 requested more time to review it last time, then it would have
11 been decided on that basis.

12 So, the next thing that I would like to go over --

13 THE COURT: Well, how does that make a difference
14 to -- the probation officer sent me a request, and it was a
15 formal request that the conditions of your supervised release
16 be monitored, and indicated they were talking to you about it.
17 The government has now come along and filed a written motion
18 and response to that, and it's the same conditions that you
19 were on notice of and I was on notice of and the probation
20 officer's requesting. So how does that prejudice you any or
21 cause any problem in our procedure here?

22 THE DEFENDANT: Because in order for anything to be
23 decided it has to be submitted to the record of the Court and
24 the docket of the Court. As far as I'm aware, neither -- the
25 judge can't act as a witness or as any other kind of support

1 until the prosecution says or use any kind of facts or anything
2 which are not evident within the docket of the Court.

3 So, for -- I'm not aware of any other instance
4 where -- and I looked into a -- probably the most closest case,
5 the most similar case was a recent case of *United States versus*
6 *John Walker Lindh* where they required similar conditions. And
7 unlike this case, in that case the prosecution had filed a
8 motion for it to be requested.

9 So I'm unclear as to how the conditions could be
10 considered if they're not formally submitted to the docket of
11 the Court. Maybe it's my lack of understanding because I am a
12 layman, but it was just something that I would like to --

13 THE COURT: Well, what do you want me to do, give you
14 two weeks to respond to the formal conditions here, which is
15 the same thing that we've been talking about for some period of
16 time? Do you want additional time to respond to the filing
17 that the government's made?

18 THE DEFENDANT: No. I think I'm ready to respond even
19 though I wasn't given enough time to particularly look at their
20 arguments in the motion. As you said, the conditions were
21 already up for consideration, and I did have the time to take a
22 look at it.

23 THE COURT: Well, you already knew about it. I mean,
24 they didn't give you new to consider.

25 THE DEFENDANT: And you're right, in terms of the

1 conditions, so I'm ready to -- to discuss that.

2 THE COURT: All right. Then go ahead.

3 THE DEFENDANT: So, I was sentenced in 2015, and at
4 the time of sentencing, I was a juvenile. When you look at my
5 judgment commitment order, which you wrote, it says that I had
6 two special conditions, which is that I will provide the
7 probation officer with any requested financial information and
8 that I'll be subject to any screening or monitoring of Internet
9 use as directed by the probation officer.

10 And I think it's very, very important to highlight
11 that I have a life term of probation, so any kind of
12 modifications of my probation, particularly to make it more
13 expansive, is something which compared to the average person
14 who might have a couple of years' term of probation is
15 something which is going to affect me for the rest of my life.
16 So I feel like that's something which should definitely be
17 considered.

18 The prosecution, through the probation office,
19 would like to add Internet restrictions, online communication
20 restrictions, a ban on extremists, slash, terroristic
21 materials, and no commun -- no knowing -- or communication with
22 any known extremists.

23 So, one of the issues that I have with this is that
24 it implies that there was an issue with the sentencing hearing,
25 because I've only just been released. So, if these

1 restrictions were in the public interest and they were
2 necessary, why weren't they brought up at the time of
3 sentencing?

4 What has changed substantially or tangibly from now
5 to sentencing that it's felt that there needs to be more
6 abridgement of my liberties since then?

7 So that's something that I didn't find any kind of
8 record or any kind of evidence for in their motion. They
9 didn't submit anything to substantiate that, as far as I could
10 tell.

11 And then another issue that I have is that it
12 doesn't seem like their request respect to standard of strict
13 scrutiny. So, there's certain things in particular when we're
14 looking to expand a person's special conditions for probation,
15 or otherwise restrictive liberties in general that has to meet
16 the standard of strict scrutiny. And that's something I would
17 like to -- I'd like to discuss.

18 So, it's also important to note that in their
19 motion the prosecution did not cite a constitutional basis or
20 even a statutory basis for what they -- for what they
21 requested. Primarily, their arguments were based off of case
22 law. And as we know, case law isn't binding on anybody except
23 for the parties at the hearing. So, in response, I would like
24 to make constitutional and statutory arguments because I feel
25 like those are probably a little bit more substantive.

1 Just give me one moment to go through my notes.

2 Okay. Discussed that.

3 So, with regards to my plea deal, the plea bargain
4 was enforceable by law the moment that you approved it. And
5 with any kind of a contract like that, both parties have to
6 live up to the terms. If I were to violate the conditions of
7 my plea agreement, there would be consequences.

8 But similarly, if the prosecution was to violate
9 any aspects of the plea agreement, then there would also be
10 consequences. And one of the primary ways that the United
11 States government can violate a plea deal is by contradicting
12 the positions that were a part of the plea deal that they
13 agreed to take. And that includes on the issues such as
14 probation.

15 So, when we were going through the plea negotiation
16 process, they brought forth special conditions. And I had an
17 opportunity to reject or to accept this plea deal. And I
18 decided to accept it. And now they're trying to add more
19 restrictions, which I didn't accept. And without any kind of
20 behavioral basis such as a probation violation to justify that.

21 So, it's important also to note that my rights, my
22 fundamental due process rights as a defendant, would trump the
23 regular terms of contract of law. So actually plea deals are
24 subject to a higher level of scrutiny than a regular contract.
25 And in addition, because the United States government has so

1 much bargaining power, when these kind of conflicts arise,
2 ordinarily the Courts, due to ambiguities, rule in the favor of
3 defendants because they had such a high initial bargaining
4 station from where to make these kinds of conditions and set
5 these things for -- that now that there's an ambiguity,
6 ordinarily the Courts rule in the favor of the defendants
7 because of their numerous disadvantages, particularly
8 considering that I'm proceeding *pro se* at the moment.

9 I have a constitutional right that the terms of my
10 plea deal are enforced in court. And as far as I can tell,
11 were my plea deal to be modified at the government's request,
12 then that would be a violation without some kind of a due
13 constitutional session toward behavioral basis of that initial
14 plea deal, which I agreed to. Had these other conditions been
15 in the plea deal, I would have never agreed to the plea deal
16 initially.

17 And by bringing this up now, it's also an
18 implication that you failed to properly sentence me. This case
19 was adjudicated on August 30th of 2015. At that time, all
20 relevant memorandums were filed. The case was litigated, both
21 sides presented their arguments, and all important issues
22 pertaining to sentencing were considered then.

23 And you weighed both sides. You looked at the
24 facts, and you made your decision.

25 So, had the government wanted to include these

1 terms of probation, why didn't they do so when they had the
2 opportunity at that time? What has changed significantly now
3 to make them or to grant them a basis for them to now modify
4 the terms of probation?

5 Now, we know due to the plea deal the government is
6 unable to appeal. So, it's almost as if they're unhappy with
7 the sentencing, but due to their inability to appeal, that they
8 have now gone through and initially filed this informal request
9 to modify, which they have now formalized due to a possible
10 procedural error after reading my motion.

11 So, had they objected to anything with regards to
12 the sentencing or regards to the plea deal, they should have
13 done it at that time, not over five years later.

14 When we look at these kinds of modifications,
15 there's something called the principle of the least restrictive
16 means. And essentially, all laws and regulations have to be
17 compelling to state interest, to the interests of the federal
18 government, and they also have to be narrowly tailored to
19 achieve that compelling purpose. That law must use the least
20 restrictive means to implement that narrowly tailored law which
21 is compelling to state interest, so all of that is strict --
22 strict scrutiny.

23 The government's interest, whatever they feel that
24 their interests are, can never supersede fundamental
25 constitutional rights. These are things which as we know are

1 endowed into people by their Creator and which cannot be
2 removed. So any interpretation with regards to abridgements of
3 constitutional rights, they have to first overcome that
4 principle of strict scrutiny.

5 So, how exactly do we overcome that principle of
6 strict scrutiny?

7 In order to do so, first of all, I'm not required
8 to prove that the government did not overcome that standard.
9 They were required to prove it, due to the fact that they made
10 this request. However, I'll go ahead and discuss why they
11 didn't meet the standard of strict scrutiny. Which is
12 important because the prosecution doesn't have an intrinsic
13 power to modify my sentencing plea deal, which is why we're
14 before the Court, because the matter is for consideration
15 before you.

16 So, my inherent human rights as per the Bill of
17 Rights and for the due process of the fundamental for -- of the
18 Fourteenth Amendment to the Constitution, I believe would be
19 modified and damaged due to this proposal.

20 To pass this strict scrutiny test, there have to be
21 a couple of standards which are met. So, it has to be the
22 least restrictive means, and there have to be three essential
23 components.

24 First of all, it has to be justified by a
25 compelling government interest, not a speculative government

1 interest; not, Oh, this could happen, or the defendant could
2 possibly commit more crimes. I committed my crime, I received
3 my sentence, and I completed my prison term.

4 So, speculative things are not direct government
5 compelling interests. They had to have provide some kind of
6 material compelling interest at this moment in order to abridge
7 my constitutional rights.

8 And furthermore, my rights have to be abridged no
9 more than absolutely necessary. They have failed to prove that
10 this is absolutely a necessary restriction on my rights more
11 than the two special probation conditions that are already
12 there.

13 I already have Internet monitoring, which I've been
14 comply -- complying with, and I already have financial
15 monitoring, which I've been complying with. And overall, I've
16 been complying to all the other terms of probation.

17 Furthermore, all of these have to be not just
18 reasonably related, but direct -- but directly related to that
19 compelling government interest, which they have failed to
20 demonstrate that there is a compelling government interest
21 which exists right now. So, they have necessarily failed to
22 prove that these conditions are directly related to them, and
23 additionally has to be crucial.

24 With regards to the standard of strict scrutiny,
25 what they request has to be crucial, not something simply

1 preferable. However, it's clear that these are just things
2 that the government would prefer with regards to monitoring.
3 They have not demonstrated these things are crucial with
4 regards to monitoring me, and that's an important distinction
5 to make.

6 So, what are some things that are crucial?
7 Something like a material national security interest or like
8 preserving the lives of large number of individuals or
9 otherwise upholding the rule of law over a large portion of the
10 nation.

11 They haven't given any kind of material basis for
12 why that this is necessary. Their motion, which I only just
13 read, just recapped the procedural history of this case, which
14 we're all aware of. And they claim because of my conviction
15 that I need more probation modifica -- more special terms of my
16 probation. How that's even an argument is beyond me.

17 So, if their action is -- comes as too much or it's
18 overbroad or it fails to address the central aspects of that
19 compelling interest, then it can't be considered narrowly
20 tailored. And there has just been no material basis or no
21 argument at law in terms of actual law in terms of, you know,
22 the Constitution, Federal Rules of Criminal Procedure, so on
23 and so forth, to justify that.

24 The next thing that I would like to emphasize is my
25 good behavior thus far on probation.

1 There has not been any issues thus far, so how
2 these conditions are narrowly tailored, I'm unsure, but I've
3 been doing fine on probation thus far. And the purpose of
4 probation is to help me reintegrate back into society and to
5 keep me as a productive member of society. The more
6 restrictive that it's made, especially if that's unnecessary,
7 it defeats the very purpose of probation.

8 If we continue to just make my probation conditions
9 more and more restricted, then how can we be confident that I
10 won't recidivate? Isn't it better if there haven't been any
11 issues this far to continue to allow me to do how I'm doing, if
12 there is no compelling interest, which they have failed to
13 prove?

14 So let's look at the elements that they requested,
15 Internet restrictions.

16 I already have Internet restrictions. I already
17 have Internet monitoring. I comply with it. As my probation
18 officer can attest to, whenever there's any kind of issue with
19 the software, I am very prompt and I make sure that I contact
20 them and I stay with them for as long as it takes to make sure
21 that it works and that it's reporting properly. And it has
22 been reporting properly.

23 So, that's -- I honestly don't even understand why
24 that's even a restriction that they're interested in -- in
25 adding, but --

1 THE COURT: Well, I'm having a little trouble figuring
2 out what they're really adding. I thought this was before me
3 for some kind of clarification.

4 I put as a condition of your supervised release
5 that you undergo any computer monitoring or direction of the
6 use subject to the probation officer's direction. Now,
7 apparently he's directed you not to go to certain -- certain
8 sites and not to talk with certain people and not to possess
9 certain materials. And that was what I intended for the
10 probation officer to do when I had him monitor you. Otherwise,
11 there's no use in monitoring you.

12 THE DEFENDANT: So then the question arises is, why
13 does there need to be material change to my plea deal or to my
14 terms of probation if that's what already is occurring?

15 THE COURT: Well, apparently you're objecting to doing
16 what the probation officer has directed you to do. You filed
17 an objection to following these restrictions that he set out --
18 he or she set out.

19 THE DEFENDANT: No. I filed an objection to the
20 request that they made to modify my plea deal, because I felt
21 like some of the language which they had in those requests --

22 THE COURT: Well, you didn't agree in your plea
23 agreement to your conditions of supervised release. I imposed
24 those.

25 THE DEFENDANT: Uh-huh.

1 THE COURT: The plea agreement has really nothing to
2 do with the conditions of supervised release that I'm required
3 to impose.

4 THE DEFENDANT: Well, part of the plea agreement was
5 that the prosecution would request certain things to you at
6 sentencing, and that wasn't -- one of the things that they
7 agreed to request was a particular term of probation with those
8 particular special conditions. And they did make that request
9 at that time, which they are now modifying.

10 THE COURT: Well, they requested, but I don't have to
11 follow their request.

12 THE DEFENDANT: Yes, I understand that. But my --

13 THE COURT: I mean, in all of these cases when I --
14 when I impose computer monitoring, a lot of times I will simply
15 leave it to the probation officer and his discretion to impose
16 those conditions.

17 And in drug cases, you don't talk with known drug
18 dealers and don't get on websites that communicate with that.
19 We do it in pornography cases, child pornography cases where
20 you don't go to those websites; you don't have that material.

21 And in your case, all they're saying is, you were
22 convicted, or you pled guilty and was convicted of being
23 involved in terrorist organizations. And so wouldn't it be
24 just plain common sense that once you're on supervised release,
25 that part of your computer monitoring is that you don't talk

1 with those people again, you don't possess that material, and
2 you don't deal in those things.

3 And the reason you have a probation officer
4 supervising the supervised release is to check and see that you
5 don't get back into the same activity you were in before. And
6 depending on what crime you have been convicted of and what
7 kind of conduct you did before, your conditions of supervised
8 release is tailored so that the probation officer can check and
9 see that you are complying.

10 And I'm just having trouble with what -- what's
11 going on here. It seems to me that this was covered. And the
12 probation officer gave you a list of specifics that you didn't
13 like and you've objected to them, but they seem perfectly
14 reasonable to me.

15 I do it to everybody else. I don't know why I
16 should make an exception for you, particularly when you've just
17 started on your supervised release.

18 Now, from time to time we've modified those
19 conditions over a period of time, but nobody just gets released
20 and starts on supervised release and then has their situation
21 changed. I mean, this seems very reasonable to me.

22 THE DEFENDANT: Well --

23 THE COURT: I do it in every case. We do it in every
24 case.

25 THE DEFENDANT: What you just said was very

1 interesting. You said nobody starts on supervised release and
2 then just has their situation changed. But I'm not requesting
3 my -- my probation be modified. The prosecution is.

4 THE COURT: Well, you both say -- you both have
5 requested that it be changed, or they requested that it be
6 changed. And I just really don't see that it's changed. I
7 mean, if the probation officer had not come in here for these
8 conditions and had told you these conditions were in effect for
9 your computer monitoring and you didn't follow it and they
10 brought you in here on a violation, I would have found that you
11 violated the terms and conditions of your supervised release
12 because you didn't follow the direction and the monitoring that
13 the probation officer required.

14 And, you know, whatever the probation officer says,
15 if you think his interpretation is erroneous, why, you can
16 always petition the Court and make a motion before the Court to
17 have that resolved. And maybe the interpretation that he's
18 made is wrong, but seems to me this is nothing more than
19 clarifying my ruling. And if I had taken the time to set out
20 all of the conditions initially, I would have done the same
21 thing. That's what I do on all of these cases on supervised
22 release.

23 If you've been convicted of doing something, your
24 Internet monitoring is going to require that the probation
25 officer can supervise your Internet use to be sure you're not

1 doing the same thing that you were convicted of. Now, we
2 haven't gone any further than that here at all, so I'm at a
3 loss as to what the problem is.

4 THE DEFENDANT: And I agree with you. I believe that
5 the probation terms, as they are, are fine. I just don't
6 understand why there's a need to change them. And, you know,
7 I --

8 THE COURT: Well, that's --

9 THE DEFENDANT: -- can conclude with that.

10 THE COURT: They're just not being -- they're just not
11 being changed. I mean, what they're asking me to do is set
12 these things out in particular. I figure that the probation
13 officer can determine what these reasonable conditions are to
14 monitor somebody's computer and then I don't have to sit here
15 and think about all of the specific conditions to computer
16 monitoring.

17 Maybe sometime I'm going to have to start doing
18 that, just at sentencing sit here and spend an extra ten
19 minutes going over each and every little condition of what you
20 can and cannot do on the computer, but it doesn't seem like I
21 ought to have to do that.

22 But you're going to have to -- you're just going to
23 have to subject yourself to the monitoring and be able to check
24 and see what websites you're using. You've got to stay off of
25 those that you can't check, and you can't have any of that

1 material that you were convicted of being involved in
2 previously. And we've got to be able to check and see that
3 that's the -- that that's the case. And that's perfectly
4 reasonable considering the nature of the offense and the
5 activity you were involved in.

6 I mean, how -- why have supervised release if
7 you're not going to check and see if people are abiding by, not
8 getting back into the same activity they were in before?

9 THE DEFENDANT: Well, I appreciate your time, sir.
10 That's all I have to say. Thank you.

11 THE COURT: All right.

12 Now, do I need to go ahead and enter an order
13 putting all these particulars in -- in this?

14 MR. HAMMERSTROM: Your Honor, this whole matter arose
15 when probation asked that the conditions be modified. But when
16 I look at -- I think the Court's original direction for
17 supervised release was that defendant should be subject to any
18 screening or monitoring of Internet use as directed by the
19 probation officer. So this is -- these are conditions that the
20 probation officer wants to impose under that broad authority
21 given by the Court, and the defendant just doesn't agree that
22 he has to be subject to these things.

23 And contrary to what he said when he started off
24 his argument, there is statutory authority for modifying
25 conditions of release under 18, U.S.C., Section 3583(e).

1 It says, The Court may modify, reduce, or enlarge
2 the conditions of supervised release at any time prior to the
3 expiration or termination of the term of supervised release.

4 He's on a lifetime term of supervised release. And
5 if the probation officer needs to modify or drill down on some
6 of the conditions to make sure he's in compliance, I think
7 that's perfectly reasonable. We need to give probation a lot
8 of deference in these types of situations.

9 As the Court pointed out, this was not part of any
10 plea deal. You know, the supervised release was imposed by
11 you. And probation has a responsibility to make sure that this
12 defendant and all defendants abide by the law. And if he
13 thinks that these conditions or these, you know, added special
14 parts of the -- or of supervised release are necessary to
15 ensure that he's in compliance with the law, I think he should
16 be given latitude to carry that out as long as everything is
17 tied to the 3553 factors, which these are.

18 THE COURT: All right. Well, the question is, do I
19 need to start putting in my orders all of these conditions of
20 these people? We can get down to what time they're going to
21 report to the probation office. I mean --

22 MR. HAMMERSTROM: No, I don't think you do, Your
23 Honor. I think you -- as you had in the original order it's as
24 directed by the probation officer. You've given that authority
25 to the probation officer.

1 THE COURT: Well, that's my understanding.

2 And I hope you understand now what we're doing
3 here. This is not any enlargement of anything other than what
4 I would have expected and what's done in the ordinary case.
5 And I don't see any reason -- why, you're just going to have to
6 comply with the reasonable conditions of the probation officer.

7 I find what he set out here to be perfectly
8 reasonable, and I would just do, and do in every case that
9 comes along. So, I think this resolves the issue. I hope it
10 resolves the issue.

11 Now, as the government says, they or you can come
12 from a modification of those conditions or if you-all can't get
13 together on conditions, it seems -- what has been presented
14 here to me by the probation officer is perfectly reasonable,
15 and it's happening in all the cases that are coming in here
16 before me and I would suspect everybody else in the building.

17 | All right. Thank you. Best of luck to you.

18 THE DEFENDANT: Appreciate it. Thank you, sir. Have
19 a nice day.

20 THE COURT: We'll stand in recess until 10:00 o'clock.

21 | THE LAW CLERK: All rise.

22 (PROCEEDINGS CONCLUDED AT 9:34 A.M.)

23 -00-

24

25

1 UNITED STATES DISTRICT COURT)

2 EASTERN DISTRICT OF VIRGINIA)

3

4 I, JULIE A. GOODWIN, Official Court Reporter for
5 the United States District Court, Eastern District of Virginia,
6 do hereby certify that the foregoing is a correct transcript
7 from the record of proceedings in the above matter, to the best
8 of my ability.

9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties to the action in
11 which this proceeding was taken, and further that I am not
12 financially nor otherwise interested in the outcome of the
13 action.

14 Certified to by me this 20TH day of DECEMBER, 2022.

15

16

17

18

/s/

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25